

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DEVONTE T. SPELLER,

Petitioner,

v.

Civil Action No. **3:13CV306**

NORFOLK CIRCUIT COURT,

Respondent.

MEMORANDUM OPINION

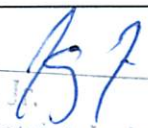
Petitioner, a Virginia state prisoner proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. By Memorandum Order entered on August 13, 2013, the Court directed Petitioner, within eleven (11) days of the date of entry thereof, to pay the \$5.00 filing fee or explain any special circumstances that would warrant excusing payment of the filing fee. The Court warned Petitioner it would dismiss the action if Petitioner did not pay the filing fee or explain any special circumstances that would warrant excusing payment of the filing fee. More than eleven (11) days have elapsed since the entry of the August 13, 2013 Memorandum Order and Petitioner has not responded. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*,

463 U.S. 880, 893 & n.4 (1983)). No law or evidence suggests that Petitioner is entitled to further consideration in this matter. The Court will deny Petitioner a certificate of appealability.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 10/4/13
Richmond, Virginia

/s/ 
John A. Gibney, Jr.
United States District Judge